

## REMARKS

Favorable reconsideration of this application, in light of the following discussion and in view of the present amendment, is respectfully requested.

Claims 1, 5, and 10-11 have been amended. Claims 1-11 are pending and under consideration.

### I. Rejections under 35 U.S.C. § 101

In the Office Action, at page 2, claim 11 was rejected under 35 USC § 101 as being directed to non-statutory subject matter. Claim 11 has been amended in response to this rejection. Accordingly, withdrawal of the § 101 rejection is respectfully requested.

### II. Rejections under 35 U.S.C. § 102

In the Office Action, at pages 2-4, claims 1-4 and 10-11 were rejected under 35 USC § 102(e) as being anticipated by Aoyagi et al. (U.S. Patent Application Publication No. 2002/0032761).

None of the cited prior art, alone or in combination, discusses or suggests:

if the network component is a management-capable network component, determining whether the network component supports layer 3 of the OSI reference model and determining whether data packets have already been forwarded in the past between the interfaces of the management-capable network component in order to classify the management-capable network component,

as recited in amended claim 1. In other words, the invention of claim 1 provides for executing two separate and distinct queries for the purpose of properly classifying a management-capable network component. Claim 1 provides both a query as to whether the network component supports layer 3 of the OSI reference model (for example, via the managed object "sysServices") and a query as to whether data packets have already been forwarded in the past between the interfaces of the management-capable network component (for example via the managed object "ipForwDatagrams").

The Examiner, at pages 5-6 of the Office Action, acknowledges that Aoyagi et al. does not teach determining whether or not packets have already been forwarded and determining whether the network component supports layer 3 of the OSI reference model. Therefore, Aoyagi et al. does not teach:

if the network component is a management-capable network component, determining whether the network component supports

layer 3 of the OSI reference model and determining whether data packets have already been forwarded in the past between the interfaces of the management-capable network component in order to classify the management-capable network component,

as recited in amended claim 1. The Examiner attempts to make up for this deficiency in Aoyagi et al. with RFC 917 and RFC 1907. However, this is submitted to be incorrect. RFC 917 and RFC 1907 merely define the objects sysServices and ipForwDatagrams. Neither RFC 917 nor RFC 1907 disclose determining whether the network component supports layer 3 of the OSI reference model or determining whether data packets have already been forwarded in the past between the interfaces of the management-capable network component for the purpose of properly classifying a management-capable network component. Therefore, neither RFC 917 nor RFC 1907 teach:

if the network component is a management-capable network component, determining whether the network component supports layer 3 of the OSI reference model and determining whether data packets have already been forwarded in the past between the interfaces of the management-capable network component in order to classify the management-capable network component,

as recited in amended claim 1.

Furthermore, the Examiner's motivation for combining the references is not proper. The Examiner indicates that it would have been obvious to use an ipForwDatagrams MIB object in the invention of Aoyagi et al. to give a strong indication the device may be categorized as a router and that it would have been obvious to use a sysServices MIB object in the invention of Aoyagi et al. to enable devices connected to a network to be classified by service type. However, Aoyagi et al. provides no motivation for determining whether data packets have already been forwarded in the past as an indication for a classification of network components. Further, the teaching or suggestion to make the claimed combination must be found in the prior art, and not be based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See M.P.E.P. § 2142. Thus, as the Examiner has relied upon the motivations of "to give a strong indication the device may be categorized as a router" and "to enable devices connected to a network to be classified by service type," which are based on the applicants' disclosure (see paragraphs [0030]-[0033] of the specification), the Examiner has failed to establish a *prima facie* case of obviousness.

Since none of the references cited, alone or in combination, discusses or suggests all of the features of claim 1, and there is no proper motivation to combine these references, claim 1

patentably distinguishes over the cited prior art. Accordingly, withdrawal of the § 102(e) rejection is respectfully requested.

Claims 2-4 depend either directly or indirectly from claim 1, and include all the features of claim 1, plus additional features that are not discussed or suggested by the references relied upon. Therefore, claims 2-4 patentably distinguish over the references relied upon for at least the reasons noted above. Accordingly, withdrawal of these § 102(e) rejections is respectfully requested.

None of the cited references, alone or in combination, discuss or suggest:

a classification unit to determine whether the network component supports layer 3 of the OSI reference model and determine whether data packets have already been forwarded in the past between the interfaces of the management-capable network component in order to classify the management-capable network component, if the network component is a management-capable network component,

as recited in amended claim 10 and there is no proper motivation to combine these references, so that claim 10 patentably distinguishes over the cited prior art. Accordingly, withdrawal of the § 102(e) rejection is respectfully requested.

None of the cited references, alone or in combination, discuss or suggest:

if the network component is a management-capable network component, determining whether the network component supports layer 3 of the OSI reference model and determining whether data packets have already been forwarded in the past between the interfaces of the management-capable network component in order to classify the management-capable network component,

as recited in amended claim 11 and there is no proper motivation to combine these references, so that claim 11 patentably distinguishes over the cited prior art. Accordingly, withdrawal of the § 102(e) rejection is respectfully requested.

### **III. Rejections under 35 U.S.C. § 102**

In the Office Action, at pages 4-8, claims 5-9 were rejected under 35 USC § 103(a) as being unpatentable over Aoyagi et al. in view of various combinations of RFC 917, RFC 1907, and Fujino.

As discussed above, the combination of Aoyagi et al., RFC 917, and RFC 1907 does not discuss or suggest all of the features of claim 1. Fujino fails to make up for these deficiencies. Claims 5-9 depend either directly or indirectly from claim 1, and include all the features of claim 1, plus additional features that are not discussed or suggested by the references relied upon.

Therefore, claims 5-9 patentably distinguish over the references relied upon for at least the reasons noted above. Accordingly, withdrawal of these § 103(a) rejections is respectfully requested.

## CONCLUSION

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.


Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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